IN THE HIGH COURT OF JUDICATURE AT BOMBAY

IN ITS ADMIRALTY AND VICE ADMIRALTY JURISDICTION

ADMIRALTY SUIT NO.27 OF 1991

1. Canara Bank and others. ...Plaintiffs.

vs.

1. Boss-1 a motor ship Vessel No.2163
and others. ...Defendants.

Mr.Umesh Shetty with Ms.S.D'Souza i/b. M/s.Umesh Shetty & Co., for Plaintiffs.

Mr.A.G.Damale, for Defendant nos.4.

CORAM: D.K.DESHMUKH,J.

DATED: 28th June, 2006.

P.C.:-

1. Heard the learned Counsel appearing for the plaintiffs and defendant nos.4. The admitted facts are that a decree on admission has been passed by this Court by order dated 1.11.1993 against defendant nos.1 and 2. The defendant no.5 is dead. The plaintiffs are not pressing for any decree against the legal representatives of deceased defendant no.5 i.e. defendant nos.5(a) & 5(b). So far as defendant nos. 6 and 7 are concerned, there is already a decree passed

by this Court against them on 23.6.1995. So far as the defendant no.8 is concerned, the defendant no.8 is claimed to be a legal heir of one of the guarantors, but in the plaint I do not find any averment made that the defendant no.8 had in fact inherited any property from the deceased guarantor. In the absence of such averments in the plaint, in my opinion, it will not be possible to pass any decree against defendant no.8, though defendant no.8 is not coming to the Court and no written statement has been filed by defendant no.8, that leaves only defendant nos.3 and 4. So far as defendant nos. 3 and 4 are concerned, necessary averments are to be found in paragraph 10 and 19 of the plaint, wherein it is averred that they have executed deeds of guarantee guaranteeing repayment of loan to the plaintiffs which are taken by defendant nos. 1 and 2. Perusal of paragraph 10 and paragraph 15 of the Written statement filed by defendant nos.3 and 4 shows that they did not dispute that they have executed deed of guarantee dated 6.8.1986 and deed of counter guarantee referred to in paragraph 19 of the plaint. The only plea raised by them is that the suit is barred by law of limitation as against them. But it appears that though the guarantee was given in the year 1986, the loan was repayable and the installments were due in the year 1989 in payment of which default was committed and therefore, the cause of action for the plaintiffs would accrue in the year 1989 and the suit has been filed in the year 1991 and therefore, there is no question of suit being barred

by Law of limitation as against defendant nos. 3 and 4. As defendant nos. 3 and 4 are not disputing the fact that they have executed guarantees and counter guarantees in favour of the plaintiffs, in my opinion, a decree is liable to be passed against defendant nos. 3 and 4. Therefore, the suit is liable to be decreed in favour of the plaintiffs and against defendant nos. 3 and 4. The defendant nos. 3 and 4 had guaranteed repayment of the amount which was given on loan by the plaintiffs to defendant nos. 1 and 2. There is already a decree on admission passed by this Court against defendant nos.1 and 2 and in favour of the plaintiffs. Therefore, a decree in the same terms is liable to be passed against defendant nos. 3 and 4. In this view of the matter therefore, the suit of the plaintiffs is decreed in favour of the plaintiffs and against defendant nos. 3 and 4 in the same terms in which this Court has decreed the suit against defendant nos. 1 and 2 by order dated 1.11.1993.